

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

IN RE:

BRANDY C. SIMONDS
Debtor(s)

Case No. 14-49772-mbm
Chapter 7
Hon. McIvor

UNIVERSITY OF MICHIGAN
CREDIT UNION,
Plaintiff,

v.

Adv. Case No.

BRANDY C. SIMONDS,
Defendant.

BUTLER, BUTLER & ROWSE-OBERLE, P.L.L.C.
KAREN L. ROWSE-OBERLE (P41893)
Attorneys for Plaintiff
24525 Harper Avenue
St. Clair Shores, MI 48080
(586) 777-0770
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COMPLAINT TO DETERMINE DISCHARGEABILITY

NOW COMES Plaintiff, UNIVERSITY OF MICHIGAN CREDIT UNION, by and through its attorneys, BUTLER, BUTLER & ROWSE-OBERLE, P.L.L.C., for its Complaint to determine dischargeability, pursuant to FRBP 4007, 7001(6), 11 U.S.C. §523(a)(2)(A), 11 U.S.C. §523(a)(2)(B) and 11 U.S.C. §523(a)(6) states as follows:

1. On June 6, 2014, Defendant filed for relief pursuant to Chapter 7 of the Bankruptcy Code.
2. The Court has jurisdiction to determine the issues presented in this matter pursuant to 28 U.S.C. §157(a) and 28 U.S.C. §1334.
3. This is a core proceeding pursuant to 11 U.S.C. §157(b)(2)(I).

4. Plaintiff is the holder of a claim against the Defendant in the above captioned matter in the amount of \$34,675.30.

COUNT I - 11 U.S.C. §523(a)(2)(A)

5. Plaintiff incorporates the allegations contained in paragraphs One through Four as if fully set forth herein.

6. Defendant financed with Plaintiff the purchase of a 2012 BMW 6 Series, VIN WBALZ3C51CC397763 on or about May 10, 2013. (See EXHIBIT A)

7. Pursuant to the Retail Installment Contract and Security Agreement, Defendant agreed to remit payment to Plaintiff in the amount of \$1,335.18 monthly for seventy two (72) months commencing June 24, 2013.

8. Defendant failed to remit the first payment in a timely fashion.

9. Defendant remitted the first payment on the account on or about August 6, 2013 at which time she was also due for the July 24, 2013 payment.

10. Defendant remitted the July 24, 2013 payment on or about August 28, 2013 at which time she was due for the August 24, 2013 payment.

11. On October 8, 2013, Defendant remitted the last payment that was made on the account.

12. On or about March 13, 2014, Plaintiff commenced a lawsuit in the Third Judicial Circuit Court for Wayne County bearing case number 14-003232-PD seeking possession of the vehicle securing the loan and a money judgment.

13. Defendant filed an Answer to the Complaint indicating that “[t]his vehicle was in my name for someone else and I wasn’t responsible for making the payments”.

14. The state court matter was stayed by the Defendant’s Chapter 7 filed on June 6, 2014.

15. At the time of filing, the Defendant was due for a partial payment for September 2013 and all subsequent monthly payments.

16. On August 8, 2014 Defendant attended a FRBP Rule 2004 Examination pursuant to an Order entered July 17, 2014.

17. At the August 8, 2014 FRBP 2004 Examination, Defendant testified as follows:

- A. She financed the vehicle for her acquaintance Kevin Johnson.
- B. Kevin Johnson was going to make the payments on the vehicle and then refinance the vehicle into his business' name, Oscar Management.
- C. She never intended to remit the payments required pursuant to the Retail Installment Contract and Security Agreement.
- D. She did not purchase the vehicle for her own use.
- E. She did not take possession of the vehicle.

18. Around the time Defendant entered into the Retail Installment Contract and Security Agreement with Plaintiff, Defendant also entered into another vehicle purchase agreement with PNC Bank for the purchase of a Ford Econoline Van.

19. On August 8, 2014, Defendant testified at the FRBP 2004 Examination that:

- A. She financed the Ford Econoline Van at the same dealership she purchased the 2012 BMW 6 Series.
- B. She used the same salesman to purchase the Ford Econoline Van and the 2012 BMW 6 Series.
- C. She financed the Ford Econoline Van for Kevin Johnson.
- D. She never took possession of the Ford Econoline Van.
- E. She did not intend to make payments on the Ford Econoline Van.

20. Defendant obtained the subject loan to purchase the Vehicle under false

pretenses, false representations and actual fraud.

21. Defendant's scheme caused the Plaintiff a loss of \$34,675.30.

22. The Retail Installment Contract provides for reasonable costs and attorney fees incurred in collecting the debt.

23. Such actions by the Defendant constitute fraud as set forth in 11 U.S.C. §523(a)(2)(A).

WHEREFORE, Plaintiff requests this Court enter Judgment in favor of the Plaintiff and against the Defendant excepting the obligation owing Plaintiff in the amount of \$34,834.47, plus interest and costs, from discharge pursuant to 11 U.S.C. §523(a)(2)(A), award reasonable attorney fees to Plaintiff and award such other and further relief as the Court deems reasonable.

COUNT II - 11 U.S.C. §523(a)(2)(B)

24. Plaintiff reincorporates the allegations contained in paragraphs One through Twenty-three as if fully set forth herein.

25. On or about May 10, 2013, Defendant made an application for credit with Plaintiff for the purchase of the Vehicle. (See EXHIBIT B)

26. The Application was materially false at the time it was presented to the Plaintiff as the Defendant significantly overstated her income.

27. The Defendant stated on the Dealer Credit Application that she earned \$7,500.00 a month at Ryder. (See EXHIBIT B).

28. When the Debtor filed her bankruptcy she listed her total wages for 2013 as \$10,564.00 and unemployment income in the amount of \$4,811.00. (See EXHIBIT C)

29. Based upon Defendant's testimony at the FRBP 2004 Examination, Defendant was never employed by Ryder and never made \$7,500.00 per month.

30. Plaintiff reasonably relied upon the representations made on the Application.

31. Defendant intended to deceive Plaintiff when she presented the false Application to Plaintiff.

32. Plaintiff suffered a loss of \$34,675.30 as the result of Defendant's materially false representations.

33. The Retail Installment Contract provides for reasonable costs and attorney fees incurred in collecting the debt.

34. Such actions by the Defendant constitute fraud as set forth in 11 U.S.C. §523(a)(2)(B).

WHEREFORE, Plaintiff requests this Court enter Judgment in favor of the Plaintiff and against Defendant excepting the obligation owing Plaintiff in the amount of \$34,675.30, plus interest and costs, from discharge pursuant to 11 U.S.C. §523(a)(2)(B), award reasonable attorney fees to the Plaintiff and award such other and further relief as the Court deems reasonable.

COUNT III - 11 U.S.C. §523(a)(6)

35. Plaintiff reincorporates the allegations contained in paragraphs One through Thirty-four as if fully set forth herein.

36. Upon application by Defendant, Plaintiff approved a Retail Installment Contract dated May 10, 2013, in the principal amount of \$83,371.70.

37. Plaintiff had a perfected security interest in the Vehicle.

38. The Purchase Agreement required that the Defendant remit monthly payments to the Plaintiff in the amount of \$1,335.18 for 72 months.

39. A total of three payments were made on Defendant's account.

40. Based upon Defendant's testimony at a FRBP 2004 Examination, Defendant did not make the payments on the account, nor did she intend on making the payments on the account.

41. Based upon Defendant's testimony at a FRBP 2004 Examination, Defendant

never took possession of the Vehicle; rather, Kevin Johnson took possession of the vehicle at Taylor Chevrolet.

42. Based upon Defendant's testimony at a FRBP 2004 Examination, Defendant never intended to take possession of the vehicle.

43. Around the same time Defendant entered into the Retail Installment Contract and Security Agreement with Plaintiff, Defendant also entered into another vehicle purchase agreement with PNC Bank at the same dealership for the purchase of a Ford Econoline Van for Kevin Johnson.

44. Defendant did not take possession of the Ford Econoline Van nor did she intend on making payments on the Ford Econline Van.

45. Defendant gave an \$83,371.70 vehicle to an acquaintance who verbally agreed to perform the Defendant's duties pursuant to the Purchase Agreement.

46. Defendant intended to willfully and maliciously injure Plaintiff when she

- A. Financed a vehicle for which she never intended to make payments.
- B. Financed a vehicle financed through Plaintiff for an acquaintance

without regard for the obligation she incurred or the affect her failure/refusal to remit payments would have on Plaintiff.

47. There remains \$34,675.30 due and owing on the contract exclusive of costs, interest and attorney fees.

48. The contract between Defendant and Plaintiff contains a provision for the award of reasonable attorney fees for collection and default issues.

49. Such intention to injure and the loss of the vehicle is cause to exclude this debt from discharge pursuant to 11 U.S.C. §523(a)(6).

WHERFORE, Plaintiff request this Court enter Judgment in favor of the Plaintiff and against Defendant excepting the obligation owing Plaintiff in the amount of \$34,675.30 plus interest

and costs, from discharge pursuant to 11 U.S.C. §523(a)(6), award reasonable attorney fees to Plaintiff and award such other and further relief as the Court deems reasonable.

September 15, 2014

BUTLER, BUTLER & ROWSE-OBERLE, P.L.L.C.

/S/Karen L. Rowse-Oberle
KAREN L. ROWSE-OBERLE (P41893)
24525 Harper Avenue
St. Clair Shores, MI 48080
(586) 777-0770
Krowse-oberle@butler-butler.com

RETAIL INSTALLMENT SALE CONTRACT
SIMPLE FINANCE CHARGE

Dealer Number _____ Contract Number _____

Buyer Name and Address (including County and Zip Code) BRANDY CHAMIE SIMMONDS 1000 PINEAPPLE DR. TAYLOR, MI 48180	Co-Buyer Name and Address (including County and Zip Code)	Creditor-Seller (Name and Address) TAYLOR CHEVROLET, 13680 TELEGRAPH RD. TAYLOR MI 48180
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreement on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us") in the contract the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

Next Used/Demo	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
USED	2012	BMW 6 SERIES	17568	WBAZ23C51CC397763	Personal, family, or household unless otherwise indicated below <input type="checkbox"/> business <input type="checkbox"/> agriculture

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL PAYMENT	TOTAL SALE PRICE
4.74 %	\$ 12761.26	\$ 83371.78	\$ 96132.96	\$ 96132.96

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	\$ 1335.18	Monthly beginning 05/24/2013

Or As Follows:

Late Charge: If payment is not received in full within 10 days after it is due, you will pay a late charge of \$ 15 or 1% of the part of the payment that is late, whichever is greater. Prepayment: If you pay off all of your debt early, you will not have to pay a penalty. Security Interest: You are giving a security interest in the vehicle being purchased. Additional Information: See this contract for more information including information about nonpayment default, any required repayment in full before the scheduled date and security interest.

TERMINATION OF AMOUNT FINANCED

1. Cash Price	
a. Taxable Part of Cash Price	\$ 77495.00
b. Vehicle	\$ N/A
c. Accessories and Installation Charges	\$ 0.00
d. Dealer Preparation Fee	\$ 200.00
e. N/A	\$ N/A
f. N/A	\$ N/A
g. N/A	\$ N/A
h. Total Taxable Part of Cash Price	\$ 77695.00
2. Sales Tax	\$ 4561.18
3. Net Taxable Part of Cash Price	\$ 82256.18
4. SERVICE CONTRACT	\$ 3698.00
5. N/A	\$ N/A
6. N/A	\$ N/A
7. Total Non-Taxable Part of Cash Price	\$ 85952.18
8. Total Downpayment	\$ 0.00
a. (Name) (Date) (Model)	
b. Gross Trade-In Allowance	\$ N/A
c. Less Pay Off Made By Seller	\$ N/A
d. Dealer Pay Trade In	\$ N/A
e. Cash	\$ 3698.00
f. Other N/A	\$ N/A
g. Total N/A	\$ 3698.00
h. Total N/A	\$ 82256.18
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rr. Total N/A	\$ 82256.18
ss. Total N/A	\$ 822

Dealer Name: Taylor Chevy
 Dealer Phone #: 734-287-2600
 Dealer Fax #: 734-287-1209

DealerTrack®

PLEASE PRINT - INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED.

INSTRUCTIONS:

You may apply for credit in your name alone, whether or not you are married.

(1) Please indicate whether you are applying for Individual Credit Joint Credit

Community Property State Business Application

(2) If you are applying for individual credit in your name and relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Section A.

(3) If you are applying for joint credit with another person, complete sections A and B.
 We intend to apply for joint credit.

Applicant

Co-Applicant

* If you are married and live in a community property state, please complete Section A about yourself and Section B about your spouse. You must sign this application. Your spouse must sign this application only if s/he wishes to be a Co-Applicant.

Last Name	First Name	Middle Initial	Social Security Number	Birth Date				
SIMONDS		BRANDY						
Address		Apt # / Suite #	P.O. Box	Rural Route	City	State	Zip	
Home Phone *	Cell Phone *	Residential Status			Time at Address			
		<input type="checkbox"/> Homeowner	<input checked="" type="checkbox"/> Rent	<input type="checkbox"/> Family	<input type="checkbox"/> Other	4 Yrs.	6 Mos.	Rent/Mig. Pmt. \$ 350.00
E-Mail Address			Driver's License No.		Driver's License State		Time at Previous Address	
Previous Full Address (if less than 2 years)			Apt # / Suite #	P.O. Box	Rural Route	City	State	Zip
Employer Name			Employment Type					
			<input checked="" type="checkbox"/> Employed <input type="checkbox"/> Unemployed <input type="checkbox"/> Self-employed <input type="checkbox"/> Military <input type="checkbox"/> Retired <input type="checkbox"/> Student <input type="checkbox"/> Other					
Salary	Salary Type		Occupation			Length of Employment	Work Phone Number	
						5 Yrs.	2 Mos.	
Previous Employer Name			Previous Employment Type					
			<input type="checkbox"/> Employed <input type="checkbox"/> Unemployed <input type="checkbox"/> Self-employed <input type="checkbox"/> Military <input type="checkbox"/> Retired <input type="checkbox"/> Student <input type="checkbox"/> Other					
Previous Occupation			Length of Employment		Previous Work Phone Number			
			Yrs. Mos.					
Alimony, child support, or separate maintenance income need not be revealed if you do not choose to have it considered as a basis for repaying this obligation.								
Other Income (Monthly)	Source of Other Income							
Last Name	First Name	Middle Initial	Social Security Number	Birth Date	Relationship			
Address	Apt # / Suite #	P.O. Box	Rural Route	City	State Zip			
Home Phone *	Cell Phone *	Residential Status			How Long			
			<input type="checkbox"/> Homeowner	<input type="checkbox"/> Rent	<input type="checkbox"/> Family	<input type="checkbox"/> Other	Yrs.	Mos.
E-Mail Address			Driver's License No.		Driver's License State		Time at Previous Address	
Previous Full Address (if less than 2 years)			Apt # / Suite #	P.O. Box	Rural Route	City	State	Zip
Employer Name			Employment Type					
			<input type="checkbox"/> Employed <input type="checkbox"/> Unemployed <input type="checkbox"/> Self-employed <input type="checkbox"/> Military <input type="checkbox"/> Retired <input type="checkbox"/> Student <input type="checkbox"/> Other					
Salary	Salary Type		Occupation			Length of Employment	Work Phone Number	
						Yrs.	Mos.	
Previous Employer Name			Previous Employment Type					
			<input type="checkbox"/> Employed <input type="checkbox"/> Unemployed <input type="checkbox"/> Self-employed <input type="checkbox"/> Military <input type="checkbox"/> Retired <input type="checkbox"/> Student <input type="checkbox"/> Other					
Previous Occupation			Length of Employment		Previous Work Phone Number			
			Yrs. Mos.					
Alimony, child support, or separate maintenance income need not be revealed if you do not choose to have it considered as a basis for repaying this obligation.								
Other Income (Monthly)	Source of Other Income							
Comments								

* You agree that if an account is created for you, all of the following also apply: (a) we may monitor and record telephone calls regarding your account to assure the quality of our service or for other reasons; (b) you expressly consent to us using prerecorded/artificial voice messages, text messages and/or automatic dialing equipment while servicing or collecting your account, as the law allows; (c) you agree that we may take these actions using the telephone number(s) that you provide us in this credit application, you provide to us in the future, or we get from another source, even if the number is for a mobile or cellular telephone and/or our using the number results in charges to you.

Exhibit 13



FEDERAL NOTICES

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. If applicable to your credit transaction, to help the government fight the funding of terrorism and money laundering activities, Federal law requires financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, you will be asked for your name, address, date of birth, and other information to identify you. You may also be asked to see your driver's license or other identifying documents.

STATE NOTICES

California Residents: An applicant, if married, may apply for a separate account.

Maine Residents: You must have physical damage insurance covering loss or damage to the vehicle for the term of the contract. For a lease, you must also have the liability insurance as described in the lease. You may purchase required insurance through any insurance agent or broker and from any insurance company that is reasonably acceptable to us. You are not required to deal with any of our affiliates when choosing an agent, broker or insurer. Your choice of a particular insurance agent, broker or insurer will not affect our credit decision, so long as the insurance provides adequate coverage with an insurer who meets our reasonable requirements.

New Hampshire Residents: If you are applying for a balloon payment contract, you are entitled, if you ask, to receive a written estimate of the monthly payment amount for refinancing the balloon payment in accord with the creditor's existing refinance programs. You would be entitled to receive the estimate before you enter into a balloon payment contract. A balloon contract is an installment sales contract with a final scheduled payment that is at least twice the amount of one of the earlier scheduled equal periodic installment payments.

New York Residents: In connection with your application for credit, a consumer report may be obtained from a consumer reporting agency (credit bureau). If credit is extended, the party or parties extending credit or holding such credit may order additional consumer reports in connection with any update, renewal or extension of the credit. If you ask, you will be told whether a consumer report was requested and, if so, the name and address of any consumer reporting agency (credit bureau) from which such credit report was obtained.

Ohio Residents: Ohio laws against discrimination require that all creditors make credit equally available to all creditworthy customers and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

Rhode Island Residents: Consumer reports may be requested in connection with this application. Buyer has the right of free choice in selecting an insurer to provide insurance required in connection with this transaction subject to our reasonable approval in accordance with applicable law.

Vermont Residents: You authorize us and any financial institution with which this credit application is shared, and each of their respective employees or agents, to obtain and verify information about you (including one or more credit reports, information about your employment and banking and credit relationships) that they may deem necessary or appropriate in evaluating your credit application. If your credit application is approved and credit is granted, you also authorize the parties granting credit or holding your account, and their respective employees and agents, to obtain additional credit reports and other information about you in connection with reviewing the account, increasing the available credit on the account (if applicable), taking collection on the account, or for any other legitimate purpose.

Married Wisconsin Residents: No provision of any marital property agreement, any unilateral statement under Wis. Stat § 766.59 or any court decree under § 766.70 applied to marital property adversely affects our interest unless you furnish a copy of the agreement, statement, or court decree or we have actual knowledge of such adverse provision before credit is granted. If you are making this credit application individually and not jointly with your spouse, complete Section A about yourself and Section B about your non-applicant spouse. Your non-applicant spouse should not sign the credit application if you are applying for individual credit.

This application may be submitted to the following financial institutions (Name(s) and Address(es))




X

APPLICANT'S SIGNATURE

DATE

X

CO-APPLICANT'S SIGNATURE

DATE

United States Bankruptcy Court
Eastern District of Michigan

In re **Brandy C Simonds**

Debtor(s)

Case No.
Chapter7

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any persons in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; and any managing agent of the debtor. 11 U.S.C. § 101(2), (31).

1. Income from employment or operation of business

None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
\$10,676.71	Wages, approx. as of 5/30/2014
\$10,564.00	Wages, approx. for 2013
\$28,202.00	Wages, approx. for 2012

2. Income other than from employment or operation of business

None State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
\$4,811.00	Unemployment, approx. for 2013